

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 34

Introduced by Assembly Member Williams

December 6, 2010

An act to add Article 1.3 (commencing with Section 43223) to Chapter 2 of Part 4 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 34, as amended, Williams. Solid waste compost facilities: odor.

(1) Existing law, the California Integrated Waste Management Act of 1989, requires the Department of Resources Recycling and Recovery to adopt regulations governing the operation of organic composting sites, including odor management and threshold levels. The act prohibits the operation of a solid waste facility, as defined, without a solid waste facilities permit issued by the enforcement agency having jurisdiction over the facility.

This bill would define terms and require the department to ~~develop~~ *adopt*, by July 1, 2012, ~~a guidance document to assist regulations with which enforcement agencies in the adoption of would be required to comply when adopting~~ site-specific objective odor performance thresholds for compost facilities. The bill would authorize a compost facility operator to apply to an enforcement agency to adopt performance thresholds, ~~pursuant to a specified procedure, including the payment of and to pay an application fee, and would require the enforcement agency to take specified actions with regard to that application, thereby~~

~~imposing a state-mandated local program in accordance with a fee schedule adopted by the enforcement agency, thereby imposing a state-mandated local program.~~

The bill would prohibit an enforcement agency from verifying ~~that an odor~~ a complaint ~~that~~ originates from a compost facility ~~for which the enforcement agency has adopted performance standards,~~ unless the odor violates certain performance ~~threshold standards~~ *thresholds*. The bill would also require a compost facility operator who submits an application to an enforcement agency to adopt performance ~~standards~~ *thresholds* to also submit to the department an annual odor regulation fee according to a fee schedule that the department would be required to establish. The bill would require the fees to be deposited in the Integrated Waste Management Account, for expenditure by the department, upon appropriation by the Legislature.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 1.3 (commencing with Section 43223) is
2 added to Chapter 2 of Part 4 of Division 30 of the Public Resources
3 Code, to read:

4
5 Article 1.3. Compost Facility Odor Performance Thresholds
6

7 43223. The Legislature finds and declares all of the following:

8 (a) The people of the state have a primary interest in diverting
9 compostable materials from the solid waste stream ~~and into~~
10 ~~compost facilities~~ that would otherwise be destined for landfills
11 ~~and into compost facilities.~~

12 (b) Pursuit of this primary interest is ~~being impeded by the~~
13 ~~existence and impeded by~~ inconsistent enforcement of subjective
14 and inconsistent odor standards set by, or enforced under, ~~local,~~
15 ~~regional~~ *local authority, regional authority*, or state legal authority,
16 including, but not limited to, ordinances, statutes, regulations,

1 rules, guidance documents, permits, orders, or common law, that
2 relates to nuisance, air quality, solid waste, or composting.

3 (c) The health, safety, and welfare of the people of the state will
4 be promoted by making available to compost facility operators, a
5 process for obtaining performance thresholds for odor control at
6 those compost facilities.

7 ~~(d) The department should issue a guidance document to assist~~
8 ~~enforcement agencies in setting performance thresholds.~~

9 *(d) The department should adopt regulations to direct*
10 *enforcement agencies with regard to setting performance*
11 *thresholds.*

12 43224. For purposes of this article, the following definitions
13 shall apply:

14 (a) “Compost facility” means a compostable materials handling
15 operation or facility that is required to have a solid waste facilities
16 permit pursuant to this division.

17 (b) “Fenceline performance threshold” means a numerical
18 dilution-to-threshold ratio, measured at the fenceline of the compost
19 facility, which corresponds to the odor performance threshold.

20 (c) ~~“Performance threshold exceedance standard”~~ *“exceedance”*
21 means an odor measurement that exceeds a performance threshold.

22 (d) “Receptor performance threshold” means a numerical
23 dilution-to-threshold ratio, measured at the ~~residence~~ *location* of
24 a person making an odor complaint regarding a compost facility,
25 which corresponds to the odor performance threshold.

26 (e) “Site-specific objective odor performance threshold” or
27 “performance threshold” means a site-specific objective odor
28 performance threshold for a compost facility.

29 43225. On or before July 1, 2012, the department shall ~~develop~~
30 ~~adopt~~, in consultation with stakeholders, ~~a guidance document to~~
31 ~~assist enforcement agencies in the adoption of regulations with~~
32 ~~which an enforcement agency would be required to comply when~~
33 ~~adopting~~ fenceline performance thresholds, receptor performance
34 thresholds, and performance threshold exceedance standards for
35 compost facilities. ~~The guidance document shall provide for~~
36 ~~regulations shall require~~ all of the following:

37 (a) Each performance threshold shall be a numerical
38 dilution-to-threshold ratio measured with a field olfactometer or
39 similar device.

(b) The fenceline performance threshold shall be the numerical dilution-to-threshold ratio, measured at the fenceline of the compost facility, which corresponds to the odor performance threshold.

(c) The receptor performance threshold shall be the numerical dilution-to-threshold ratio measured at the ~~residence~~ *location* of a person making an odor complaint regarding the compost facility, which corresponds to the odor performance threshold.

~~(d) The guidance document shall require enforcement agencies, when~~

(d) When developing standards to be used in determining a performance threshold exceedance, to an enforcement agency shall ensure that odor measurements are verifiable and repeatable and that the odor at a residence is the same odor as the odor originating at the compost facility.

~~(e) The guidance document shall set standards limiting the the complaint location originated from the compost facility.~~

(e) The enforcement agency shall include, in the standards, a limit on the maximum number of performance threshold exceedance standards that can occur in a 24-hour period.

43226. (a) A compost facility operator may apply to an enforcement agency to adopt fenceline performance thresholds, receptor performance thresholds, and performance threshold exceedance standards for that compost facility. *The compost facility operator shall make this application pursuant to paragraph (2) of subdivision (a) of Section 21620 of Title 27 of the California Code of Regulations, and for purposes of the procedures set forth in that regulation, the application shall be considered an amendment to a report of facility information.*

(b) The compost facility operator's application for performance thresholds shall include proposed performance thresholds for the facility and an explanation of why those performance thresholds would be appropriate in light of the relevant circumstances.

(c) (1) Except as provided in paragraph (2), the application shall be accompanied by a filing fee according to a fee schedule established by the enforcement agency to reflect the costs of processing the application.

(2) If the enforcement agency has not established a fee for a performance thresholds application as of the date that an application is filed, the operator is not required to submit a fee to the enforcement agency.

1 ~~(d) Within 60 days after the date of receipt of a performance~~
2 ~~thresholds application, the enforcement agency shall provide the~~
3 ~~facility operator with draft performance thresholds for the facility.~~
4 ~~If the draft performance thresholds are different from the~~
5 ~~performance thresholds proposed in the application, the~~
6 ~~enforcement agency shall include an explanation of the differences.~~

7 ~~(e) Within 30 days after the date of receipt of the enforcement~~
8 ~~agency's draft performance thresholds and accompanying~~
9 ~~explanation, the compost facility operator may submit a response~~
10 ~~to the enforcement agency.~~

11 ~~(f) Within 120 days of receipt of a performance threshold~~
12 ~~application, the enforcement agency shall provide the facility~~
13 ~~operator and department with final performance thresholds for the~~
14 ~~facility and an explanation of why the performance thresholds are~~
15 ~~appropriate in light of the relevant circumstances. The explanation~~
16 ~~shall include all elements required in connection with the draft~~
17 ~~performance threshold.~~

18 ~~(g) The department may reject the final performance thresholds~~
19 ~~within 30 days of completion. If the department rejects the final~~
20 ~~performance thresholds pursuant to subdivision (f), the department~~
21 ~~shall explain the reasons for rejection and offer suggestions for~~
22 ~~remedying the department's concerns.~~

23 ~~(h) The final performance thresholds shall be deemed accepted~~
24 ~~by the department if no action is taken by the department within~~
25 ~~30 days of receipt of the final performance thresholds.~~

26 ~~(i) Within 30 days after the enforcement agency provides the~~
27 ~~facility operator and the department with final performance~~
28 ~~standards pursuant to subdivision (f) and the department fails to~~
29 ~~take action pursuant to subdivision (h), or within 30 days after the~~
30 ~~department rejects the final performance thresholds pursuant to~~
31 ~~subdivision (g), the compost facility operator may appeal the final~~
32 ~~performance thresholds to the department, which shall conduct a~~
33 ~~de novo review of the performance thresholds.~~

34 ~~(2) The evidence before the department shall consist of the~~
35 ~~record before the enforcement agency and any other relevant~~
36 ~~evidence that, in the judgment of the department, should be~~
37 ~~considered to effectuate and implement the policies of this division.~~

38 ~~(3) The department shall make a finding that the enforcement~~
39 ~~agency's final performance thresholds were one of the following:~~

40 ~~(A) Appropriate and proper.~~

1 ~~(B) Inappropriate.~~

2 ~~(C) Improper.~~

3 ~~(4) Upon finding that the enforcement agency's final~~
4 ~~performance threshold were inappropriate or improper, the~~
5 ~~department shall issue final performance thresholds that are~~
6 ~~appropriate and proper, together with an explanation including all~~
7 ~~elements required in connection with the enforcement agency's~~
8 ~~draft performance threshold.~~

9 ~~(5) Within 30 days after receipt of department's decision~~
10 ~~pursuant to paragraph (32), the compost facility operator may file~~
11 ~~with the superior court a petition for writ of mandate for review~~
12 ~~of the decision under Section 1094.5 of the Code of Civil~~
13 ~~Procedure, and the court shall exercise its independent judgment~~
14 ~~on the evidence pursuant to subdivision (c) of Section 1094.5 of~~
15 ~~the Code of Civil Procedure.~~

16 ~~43227. An enforcement agency shall not verify an odor~~
17 ~~complaint originating from a compost facility, for which the~~
18 ~~enforcement agency has adopted performance thresholds pursuant~~
19 ~~to Section 43226, unless the odor violates performance threshold~~
20 ~~exceedance standards; a complaint regarding an odor originating~~
21 ~~from a compost facility unless the odor exceeds a performance~~
22 ~~threshold established pursuant to this article for that facility.~~

23 ~~43228. A compost facility operator who elects to submit an~~
24 ~~application to an enforcement agency to adopt performance~~
25 ~~standards pursuant to this article shall also submit to department~~
26 ~~thresholds pursuant to this article shall also submit to the~~
27 ~~department an annual odor regulation fee according to a fee~~
28 ~~schedule established by the department. The department shall set~~
29 ~~the fee schedule pursuant to this section based on the reasonable~~
30 ~~regulatory costs to the department incident to implementing this~~
31 ~~section and shall deposit the fees in the Integrated Waste~~
32 ~~Management Account, for expenditure by the department, upon~~
33 ~~appropriation by the Legislature to implement this section article.~~

34 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
35 ~~Section 6 of Article XIII B of the California Constitution because~~
36 ~~a local agency or school district has the authority to levy service~~
37 ~~charges, fees, or assessments sufficient to pay for the program or~~

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

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